

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

PETRIT DIKO, #1982278

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:20cv731

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Kimberly C. Priest Johnson, who issued a Report and Recommendation concluding that the petition for writ of habeas corpus should be dismissed with prejudice as time-barred. Petitioner filed objections.

In the objections, Petitioner continues to urge he is entitled to equitable tolling of the AEDPA one-year limitations period. The Court has reviewed the tendered objections, and they generally add nothing new to Petitioner's prior contentions in this case. Despite his arguments, Petitioner fails to show that the Report is in error or that he is entitled to equitable tolling. Petitioner also argues he is entitled to a certificate of appealability because jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right. Petitioner then addresses the merits of the claims he raised in his 28 U.S.C. § 2254 petition. In this case, however, the Report recommends dismissal of the § 2254 petition on procedural grounds without reaching Petitioner's underlying constitutional claims. "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further. In such a circumstance, no appeal would be warranted." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Because Petitioner's § 2254 petition is clearly untimely and

dismissal on this basis is warranted, the Report correctly concluded Petitioner is not entitled to a certificate of appealability. *See id.*

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

It is accordingly **ORDERED** the petition for a writ of habeas corpus is **DISMISSED** with prejudice as time-barred. A certificate of appealability is **DENIED**.

It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 27th day of July, 2023.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE